

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UGORJI 0. UGORJI,

Plaintiff,

V.

THE DEPARTMENT OF  
ENVIRONMENTAL PROTECTION OF  
THE STATE OF NEW JERSEY,  
et al.,

Defendants.

CIVIL ACTION NO. 08-5424 (MLC)

## MEMORANDUM OPINION

**THE PLAINTIFF** bringing this action to recover money damages from defendants, the Department of Environmental Protection of the State of New Jersey and the New Jersey Environmental Infrastructure Trust, for alleged violations of (1) 42 U.S.C. § 1981 (Counts I and II), (2) 42 U.S.C. § 1983 (Counts III and IV), and (3) N.J.S.A. § 10:5-1 (Counts V and VI) (dkt. entry no. 1, Compl. at 10-19); and defendants moving to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) (dkt. entry no. 6, Mot. to Dismiss); and plaintiff cross-moving to amend the Complaint and voluntarily dismiss Counts I, II, V, and VI of the Complaint (dkt. entry no. 8, Cross Mot. to Amend Compl.; dkt. entry no. 9, Pl. Resp.); and plaintiff attaching a proposed amended complaint that alleges claims under 42 U.S.C. § 1983 and the Equal Protection Clause of the United States Constitution (dkt. entry no. 10, Proposed Am. Compl.); and plaintiff naming only Robert Briant, Dennis Hart, and Frank

Scangarella as defendants in the proposed amended complaint (see id.);<sup>1</sup> and plaintiff withdrawing his claims against defendants based on 42 U.S.C. § 1983 (Counts III and IV of the Complaint) (see id.); and

**THE COURT** thus intending to (1) grant the cross motion to amend the Complaint and voluntarily dismiss claims, (2) dismiss Counts I, II, V, and VI of the Complaint with prejudice, (3) dismiss without prejudice Counts III and IV of the Complaint insofar as asserted against defendants as withdrawn, and (4) deny the motion to dismiss the Complaint as moot; and the Court deciding the motion and cross motion without oral argument and on the papers, see Fed.R.Civ.P. 78(b); and for good cause appearing, the Court will issue an appropriate order and judgment.

s/ Mary L. Cooper  
**MARY L. COOPER**  
United States District Judge

Dated: April 17, 2009

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<sup>1</sup> Plaintiff is instructed to name defendants Robert Briant, Dennis Hart, and Frank Scangarella in their individual capacities in the amended complaint as "neither a State nor its officials acting in their official capacities are 'persons' under [42 U.S.C. § 1983]" in actions, such as this, to recover money damages. Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989); Melo v. Hafer, 912 F.2d 628, 634-35 (3d Cir. 1990), aff'd, 502 U.S. 21 (1991).